

Message Text

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ACTION XMB-04

INFO OCT-01 EUR-12 ISO-00 EB-08 FRB-03 TRSE-00 CIAE-00

INR-07 NSAE-00 /035 W

-----181257Z 107921 /40

P R 181130Z MAR 77

FM AMEMBASSY ANKARA

TO SECSTATE WASHDC PRIORITY 6816

INFO AMCONSUL ADANA

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FOR EXPORT-IMPORT BANK: CLAYTON NORRIS, VICE PRESIDENT

E.O.11652: N/A

TAGS: BEXP, EFIN, TU

SUBJECT: EXPORT-IMPORT BANK LOAN TO CUKUROVA ELEKTRIK

REF: ANKARA 1848

1. PROVISIONS OF ARTICLE 57 OF LAW 2067 (FY 1977 BUDGET LAW) PRINTED IN OFFICIAL GAZETTE MARCH 1, SUPPORTS GOT CONTENTION THAT (A) FINANCE MINISTRY DOES NOT HAVE LEGAL AUTHORITY TO GUARANTEE EXIMBANK LOAN TO CUKUROVA ELEKTRIK AND (B) OPERATING AGREEMENT SIGNED MARCH 15, 1973, BETWEEN TURKISH MINISTER OF FINANCE AND PRESIDENT OF EXIM-BANK PRECLUDES EXIM LOAN TO MINISTRY IN BEHALF OF CUKUROVA.

2. ARTICLE 57 OF LAW 2067 FOLLOWS IN UNOFFICIAL EMBASSY TRANSLATION:

QUOTE: WITH A VIEW TO FURTHER PROMOTING DEVELOPMENT OF THE VARIOUS SECTORS OF THE ECONOMY, AND IN COMPLIANCE WITH THE PROVISIONS OF (LOAN) AGREEMENTS, THE MINISTRY OF FINANCE IS AUTHORIZED TO LEND OR TO TRANSFER TO PUBLIC AND PRIVATE SECTOR ENTERPRISES LOANS

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OBTAINED FROM FOREIGN COUNTRIES, INTERNATIONAL INSTITUTIONS, OR FOREIGN BANKS AND ORGANIZATIONS.

QUOTE: THE MINISTRY OF FINANCE IS AUTHORIZED TO GUARANTEE CREDITS -- UNDER CONDITIONS STIPULATED IN (LOAN) AGREEMENTS -- TO BE EXTENDED TO PUBLIC-SECTOR ENTERPRISES (INCLUDING THOSE SUBJECT TO LAWS GOVERNING PRIVATE ENTERPRISES WHEN MORE THAN 50 PER-

CENT OF THE CAPITAL OF SUCH PUBLIC SECTOR ENTERPRISES BELONGS TO THE STATE) AND TO INVESTMENT BANKS BY INTERNATIONAL INSTITUTIONS AND CREDIT ORGANIZATIONS OF FOREIGN COUNTRIES AND BY FOREIGN SOURCES OF ANY KIND WHATSOEVER, AND TO GIVE TRANSFER GUARANTEES, WITHIN THE FRAMEWORK OF THE LEGISLATION ON THE PROTECTION OF THE VALUE OF THE TURKISH CURRENCY (DECREE NO. 17), FOR CREDITS TO BE EXTENDED TO PRIVATE SECTOR ENTERPRISES. UNQUOTE

3. SECOND PARAGRAPH OF ARTICLE 57 DOES NOT AUTHORIZE GOT TO GUARANTEE CREDITS EXTENDED BY FOREIGN CREDIT ORGANIZATIONS TO A COMPANY SUBJECT TO LAWS GOVERNING PRIVATE ENTERPRISES UNLESS THE STATE OWNS MORE THAN 50-PERCENT INTEREST IN THE COMPANY. CUKUROVA ELEKTRIK IS A PRIVATE FIRM UNDER TURKISH LAW; THE GOT HAS A 25-PERCENT INTEREST IN IT. FINANCE MINISTRY, THEREFORE, CANNOT LEGALLY GUARANTEE AN EXIMBANK LOAN TO CUKUROVA.

4. ALTHOUGH FIRST PARAGRAPH OF ARTICLE 57 SUGGESTS THAT FINANCE MINISTRY WOULD HAVE LEGAL AUTHORITY TO ACCEPT A LOAN FROM EXIMBANK IN BEHALF OF CUKUROVA ELEKTRIK, SADRULLAH AYGUN, DIRECTOR GENERAL (FOREIGN FINANCING), GOT TREASURY, INFORMED E:C COUNSELOR MARCH 16 THAT OPERATING AGREEMENT BETWEEN EXIMBANK AND FINANCE MINISTRY TAKES PRECEDENCE. AGREEMENT CONTAINS FOLLOWING PERTINENT LANGUAGE:

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QUOTE: ANY RESPONSE BY THE AGENCY (I.E., THE APPROPRIATE AGENCY OF THE GOVERNMENT OF TURKEY) TO THE EFFECT THAT THE PROPOSED TRANSACTION IS DESIRABLE FOR THE ECONOMIC DEVELOPMENT OF TURKEY WOULD NOT, IN ITSELF, CONSTITUTE A GUARANTEE OF REPAYMENT OF ANY LOAN RELATING TO SUCH TRANSACTION. SHOULD THE NEGOTIATIONS AUTHORIZED BY THE AGENCY BE CONSUMMATED IN A MANNER SATISFACTORY TO THE PARTIES AND THE AGENCY, THE GOVERNMENT OF TURKEY WOULD BE REQUESTED BY PUBLIC BORROWERS TO GUARANTEE REPAYMENT OF ANY LOANS MADE OR GUARANTEED BY EXIMBANK, WHICH GUARANTEE WOULD BE A CONDITION PRECEDENT TO EXIMBANK PROVIDING ITS FINANCIAL ASSISTANCE. IN TRANSACTIONS WITH PRIVATE BORROWERS, AS A CONDITION PRECEDENT TO EXIMBANK PROVIDING ITS FINANCING ASSISTANCE, THE GOVERNMENT OF TURKEY WOULD BE REQUESTED BY THE PRIVATE BORROWER TO ASSURE THE CONVERTIBILITY OF THE CURRENCY OF TURKEY TO U.S. DOLLARS IN SUCH AMOUNTS AND AT SUCH TIME AS NECESSARY TO REPAY PRINCIPAL AND INTEREST OF ALL CREDITS RESULTING

FROM THE EXIMBANK ASSISTANCE. UNQUOTE

6. EMBASSY FILES CONTAIN COPY OF LETTER OF NOVEMBER 20, 1972, FROM FORMER EXIMBANK PRESIDENT HENRY KEARNS TO ZIYA MUEZZINOGLU, FORMER FINANCE MINISTER, SETTING FORTH MR. KEARNS' UNDERSTANDING OF HIS CONVERSATION WITH THE MINISTER ON OPERATING PROCEDURES. LETTER CONTAINS FOLLOWING SENTENCES WHICH APPEAR TO BEAR OUT AYGUN'S INTERPRETATION OF OPERATING AGREEMENT:
QUOTE: IT IS MY UNDERSTANDING FROM OUR CONVERSATION THAT WHEN PURCHASES ARE MADE BY ANY GOVERNMENT CORPORATION OR ENTITY, AFTER HAVING RECEIVED YOUR APPROVAL, REPAYMENT OF ALL OBLIGATIONS IS GUARANTEED BY YOUR MINISTRY ON BEHALF OF YOUR GOVERNMENT. IN THE CASE OF PRIVATE PURCHASERS, IT IS MY UNDERSTANDING THAT YOUR GOVERNMENT DOES NOT GUARANTEE REPAYMENT BUT THAT IF THE TRANSACTION HAS BEEN APPROVED, YOU DO ASSURE CONVER-
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TIBILITY FROM LIRA TO THE APPROPRIATE FOREIGN CURRENCY IN SUFFICIENT AMOUNTS TO REPAY PRINCIPAL AND INTEREST AS DUE. UNQUOTE.

7. IN SHORT, GOT LAW DOES NOT PERMIT CUKUROVA ELEKTRIK TO BE TREATED AS PUBLIC COMPANY DESPITE GOVERNMENT'S SUBSTANTIAL OWNERSHIP SHARE AND ITS RIGHTS OF REGULATION. EMBASSY CAN ONLY RESTATE ITS RECOMMENDATION THAT EXIMBANK TAKE, AS NEXT-BEST ALTERNATIVE TO FINANCE MINISTRY GUARANTEE, GUARANTEE OF GOVERNMENT-OWNED ETIBANK.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
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Sent Date: 18-Mar-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977ANKARA02012
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
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Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 77 ANKARA 1848
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 06-Apr-2005 12:00:00 am
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Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3072015
Secure: OPEN
Status: NATIVE
Subject: EXPORT-IMPORT BANK LOAN TO CUKUROVA ELEKTRIK
TAGS: BEXP, EFIN, TU, US, XMB, CUKUROVA ELEKTRIK
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/84ff7cb6-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009